

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11280 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PANKAJ @ PANKHO NARSINH RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/09/1999

ORAL JUDGEMENT

1. Heard learned advocate Mr. Anil S. Dave for the
petitioner and learned A.G.P. Mr. Samir Dave for
respondent Nos. 1 to 3.

2. The detention order dtd. 25/11/98 passed by the
respondent NO. 1 - Commissioner of Police, Surat City,
against the petitioner in exercise of powers conferred
under Sec. 3 (1) of Gujarat Antisocial Activities Act

("PASA" for short), is challenged in the present petition filed under Article 226 of the Constitution.

3. The grounds of detention produced by the petitioner at Annexure - C indicate that three criminal cases for the offences made punishable under Indian Penal Code have been registered against the petitioner. Crime Register NO. 191/98 is registered at Varachha Police Station in respect to incident which has occurred on 5/6/98 and the petitioner was arrested on 23/6/98 for the alleged offences made punishable under Sec. 324 read with Sec. 114 of IPC. The Crime Register NO. 267/98 is registered at Varachha Police Station in respect to the incident which has occurred on 22/8/98 and the petitioner was arrested on 26/10/98 for the offence made punishable under Sec. 324 of IPC and Sec. 135 of Bombay Police Act. Both the above stated cases are pending for trial in the Court. Crime Register NO. 206/98 is registered against the petitioner at Kapodra Police Station in respect to the incident which has occurred on 27/9/98 and the petitioner was arrested on 8/10/98 for the offences made punishable under Sec. 302, 143, 147, 148 and 149 read with Sec. 34 of IPC and Sec. 135 of B.P. Act. The said case is pending investigation.

4. That apart from the above three registered cases, the respondent NO. 1 has taken into consideration two statements of witnesses recorded on assurance of anonymity on 3/11/98, wherein, the incident dtd. 9/9/98 and 2/10/98 are disclosed by the witnesses. Respondent NO. 1 has concluded on the basis of above stated material that petitioner is a "dangerous person" within the meaning of Sec. 2 (c) of PASA. That resort to general provisions of law is not sufficient to prevent the petitioner from continuing his anti-social activity, which is likely to prejudicially affect the maintenance of public order and as such, the impugned order is passed.

5. Learned advocate Mr. A.S. Dave has assailed the impugned order on numerous grounds. It is contended that the documents supplied with grounds to the petitioner also contain some documents in English language and as the petitioner does not know English, the petitioner demanded the translation of the said documents vide representation made to the State Govt. dtd. 29/7/99. Copy of which is produced on record. It is submitted that as no reply to the representation made by the petitioner and demand for translation of documents as claimed has been received, the petitioner amended the petition on 13/8/99 and added additional grounds of

challenge vide para 20 (A) and 20 (B). Shri Dave has submitted that non-supply of such documents prevented the petitioner from making effective representation against the preventive detention, which has violated his fundamental right guaranteed under Article 22 (5) of the Constitution and thereby, continued detention of the petitioner has become illegal.

6. In reply to the contention urged, learned A.G.P. Mr. Samir Dave has stated at bar that as per noting on file, the Secretary, Home Department (Special), Gandhinagar, directed the detaining authority to supply the true translation of the documents, claimed by the petitioner vide representation dtd. 29/7/99, however, the State has no information whether the same has been supplied or not.

7. It may be noted that despite the service of rule, no affidavit on behalf of the respondents, particularly respondent NO. 1 who is detaining authority, has been filed to controvert the statement made in the petition. Under the circumstances, it is not in dispute that the true translation of documents relied on by the detaining authority while formulating the grounds of detention, have not been supplied to the petitioner which has prevented him from making effective representation and has rendered the impugned order illegal.

8. As the petition succeeds on the above stated ground alone, it is not necessary to dilate the issue and decide the remaining grounds of challenge, as contended by the petitioner.

9. On the basis of aforesaid grounds, the impugned order dtd. 25/11/98 passed by the respondent NO. 1 Commissioner of Police, Surat City, against the petitioner is hereby quashed and set aside and petitioner Pankaj alias Pankho Narsinh Rathod is ordered to be set at liberty forthwith, if not required in any other case.

Rule made absolute accordingly.

Rafik*